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N.C. judge says he'll rule this week on Phase II payments

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GREENSBORO, N.C. -- With about 250 tobacco growers looking on, attorneys for cigarette companies and farmers squared off in court Monday over whether Big Tobacco should make one last settlement payment to leaf growers.

North Carolina Business Court Judge Ben Tennille told lawyers he hoped to make his ruling by Wednesday or Thursday. It would have a big impact on thousands of growers in 14 states.

"Some growers are waiting on the payment to buy things like gasoline and fertilizer," said Greensboro farmer Andy Clapp, who grows 70 acres of tobacco. He was one of the growers who jammed the courtroom for the three-hour hearing.

Millions of dollars in Phase Two payments have compensated tobacco growers for losses they were expected to suffer under higher cigarette prices since the landmark 1998 settlement between Big Tobacco and the states.

Cigarette companies contend they aren't obligated to make a payment this month because Congress approved a \$10.1 billion tobacco buyout this fall. They also are seeking a refund on previous payments.

An appeal is likely in any ruling, which would delay a final decision for months.

In 1999, the four major tobacco companies agreed to make \$5.15 billion in Phase II payments over 12 years to compensate growers and quota holders for losses stemming from the \$206 billion tobacco settlement.

At the hearing, cigarette company lawyers told Tennille that the quota buyout passed by Congress in October should negate payments they were required to make this year under the agreement known as Phase II.

"That is what the deal was," tobacco industry attorney Larry Sitton told the judge. "It's one way or the other, you don't get both."

Sitton said the growers will be "far better off under the buyout" than if they continued to get the Phase II payments. But "in exchange for the (buyout), they are going to have to give up their Phase II payments."

A board that oversees Phase II payments said the growers are counting on a final \$189 million payment at the end of 2004, before the buyout takes effect. According to the board, Congress's buyout bill does not specify when the Phase II payments should end.

Farmers are to start receiving buyout payments next year.

"I submit that Congress knew what it was doing," said Dick Ellis, an attorney for the state boards that oversee the payments. "The silence on that subject is loud."

Attorneys for the boards in the 14 states, as well as the trustees at JPMorgan Chase, argue that the companies aren't relieved of the Phase II payments until they actually make payments for the buyout to the U.S. Department of Agriculture. That won't happen until early 2005.

While tobacco farmers have known that the tobacco buyout would probably end the payments, they contend they should still get the Phase II settlement payments through the end of the year.

The buyout is designed to end decades of leaf production under a Depression-era quota system that kept prices artificially high and critics said put U.S. growers at a disadvantage.

In North Carolina, the nation's top tobacco-growing state, some 80,000 farmers received Phase II payments last year totaling \$154 million.

Though the suit is being heard in a special state court in North Carolina, any ruling by Tennille will apply to tobacco companies and farmers in other tobacco states.

"This issue is very important to a lot of growers," said Tennessee Agriculture Commissioner Ken Givens, who attended Monday's hearing. "A lot of them used this money to make end of the year payments so they could get a break on their taxes."

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